

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.
COMPANY PETITION NO.738 OF 2005
CONNECTED WITH
COMPANY APPLICATION NO.521 OF 2005**

In the matter of Sections
391 to 394 of the Companies
Act, 1956 (Act I of 1956);

In the matter of the Scheme of
Amalgamation between Nucleus
Netsoft and GIS (India) Limited
and Nucleus Securities Limited
and etc.

Nucleus Netsoft And GIS (India) Limited ...Petitioner.

Mr.Rishabh Shah with Saeeda Bandukwala i/b J.Sagar &
Associates for the Petitioner.
Mr.S.C.Gupta for Official Liquidator.
Mr.C.J.Joy with R.C.Master and M.M.Goswami i/b
Dr.T.C.Kaushik for the Regional Director.

**WITH
COMPANY PETITION NO.739 OF 2005
CONNECTED WITH
COMPANY APPLICATION NO.522 OF 2005**

In the matter of Section
No.391 to 394 of the
Companies Act, 1956(Act I
of 1956)
And

In the matter of the
Scheme of Arrangement
between Nucleus Netsoft
and GIS (India) Limited
and Nucleus Securities
Limited; and etc.

Nucleus Securities Limited ...Petitioner.

Mr.Rishabh Shah with Saeeda Bandukwala i/b J.Sagar &
Associates for the Petitioner.
Mr.S.C.Gupta for Official Liquidator.
Mr.C.J.Joy with R.C.Master and M.M.Goswami i/b
Dr.T.C.Kaushik for the Regional Director.

CORAM : S.J.VAZIFDAR, J.

DATED : 10th February, 2006.

P.C.:

1. The above Company Petitions have been filed seeking sanction to the scheme of amalgamation. The Petitioner in the Company Petition No.738 of 2005 is the Transferor Company. The Petitioner in the Company Petition 739 of 2005 is the Transferee Company.
2. The Official Liquidator has filed an Affidavit/Report in the Company Petition No.738 of 2005 stating that the affairs of the transferor company, namely, M/s.Nucleus Netsoft and GIS (India) Limited have not been conducted in a manner prejudicial to the interest of its members or to public interest.
3. The Regional Director has filed a composite affidavit in the above Company Petitions. Save and except, certain objections, the Regional Director has stated that the scheme is not prejudicial to the interest of the creditors and shareholders.
4. There were three main objections. The first relates to the alleged non-compliance by the Transferee

Company of the provisions of Section 78 read with 101 of the Companies Act, 1956. However, by an order dated 28th October, 2005, the procedure under section 101(2) has been dispensed with.

5. The second objection is with regard to the change in name which is also provided for in the scheme. According to the Regional Director, the Transferee Company ought to follow the procedure under sections 21 and 23 of the Companies Act, 1956. The Company has agreed to do so. The scheme is therefore subject to the company following the procedure. In the circumstances, this order, so far as the change in name is concerned, shall come into operation after the company follows the procedure and obtains necessary approval in regard to the change in its name.

6. Lastly it was submitted that the Transferee Company ought to follow the procedure under sections 18 and 19 of the Companies Act, 1956 regarding the proposed change in its objects clause in Memorandum of Association. One of the purposes of the amalgamation is necessarily that the Transferee Company can continue doing business of the Transferor Company. For this purpose, it is necessary that the Objects Clause of the Transferee Company is altered. In view of the judgment of this Court in **PMP Auto**

Industries Limited (1994) 80 Company Cases 289, this objection is rejected.

7. The Company states it does not intend to increase its authorised share capital. In view thereof, the provisions of Section 97 do not come into operation. This order sanctioning the scheme, therefore, will not include an order in terms of clauses 16.4 and 16.5 of the scheme by which the Transferee Company had proposed to increase its authorised share capital.

8. Subject to what is stated above, Company Petition No.738 of 2005 is made absolute in terms of prayers (a) to (g) and Company Petition No.739 of 2005 is made absolute in terms of prayers (a) to (j).

9. Cost of the Regional Director is fixed at Rs.2,500/- in each of the above Petitions and cost of the Official Liquidator is fixed at Rs.2,500/- in Company Petition No.738 of 2005.

10. Filing and issuance of the drawn up order is dispensed with.

11. All concerned to act on ordinary copy of this order duly authenticated by the Company Registrar as also

Exhibit 'L' annexed to the Company Petition No.739 of 2005 to enable the Petitioners to file the same with the Registrar of Companies.